

# Minutes of the January 22, 2010 Regular Council Meeting

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*Approved with changes 2.26.2010*

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Tingle, Serio, Langan, Carmean, and Smallwood.

Council Absent: Bunting

## **Presentation: DNREC Division of Soil & Water Conservation**

Tony Pratt and Maria Sadler presented a summary of DNREC activities relative to the state of the beach and crossovers for areas affected by the November 2009 Northeast. Audio of the presentation is included in the audio of the January 22, 2010 meeting. A copy of supporting materials is included in the bound meeting materials for January 22, 2010 meeting packet found in the Town Manager's office.

## **DISCUSSION**

Council Member Smallwood asked Mr. Pratt to explain the use of rope and pole dune fencing vs. standard snow fencing. Mr. Pratt explained that the new rope/pole arrangement has been found to be more effective in order to maintain safe sand levels on the dunes vs. standard snow fencing. In response to a question from Council Member Langan, Mr. Pratt advised that DNREC will continue to use snow fencing on crossovers and that DNREC continues to monitor the condition of dunes and crossovers for safety but that the sand is coming back slowly. He also noted that his department will continue to push sand up from the water line to stabilize the dunes and to give them a broader structure.

## **PUBLIC PARTICIPATION**

Mike Quinn asked if DNREC would allow citizen volunteers to assist them. Mr. Pratt advised that the public is invited to assist in selected activities and especially with the annual dune grass planting. Maria Sadler will advise Town Hall of the actual date (sometime in March 2010).

## **Topics for Discussion and Possible Action:**

- a. Resolution # 41-2010 Addendum to Fee Schedule  
Motion to adopt Resolution #41-2010 – Council Member Carmean  
Second – Council Member Langan

## **DISCUSSION**

Mayor Serio believed the Resolution #41-2010 to be incomplete as presented. Council Member Weistling advised that previously the fees for bonfires was set by Ordinance. Council revised the ordinance but did not include the fee in the Fee Schedule established by Resolution #38-2009. This Resolution adds the fee for bonfires to the Fee Schedule. Further clarification was requested by Mayor Serio on 2/26/2010 as part of Minutes approval. Mayor Serio requested that minutes reflect her confusion about referencing Resolution #38-2009. This resolution, the Annual Fee Schedule adopted by Council, did not change the Bonfire Permit Fee as that fee was set by Ordinance at the time of Resolution #38-2009 passage. In order to revise Bonfire Permit Fees, it was necessary to remove the reference to a stated fee amount from Town Ordinance. Once changed, Resolution #41-2010 was intended to serve as an addendum to the original Fee Schedule set out by Resolution #38-2009. The wording of proposed Resolution #41-2010 did not adequately express this and so the proposed resolution was revised by motion of Council Member Carmean (seconded by Council Member Langan). That resolution was passed by unanimous vote of Council.

Motion to adopt Resolution #41-2010 Addendum to Fee Schedule with the inclusion of explanatory information regarding permit fees and deposits – Council Member Carmean  
Second – Council Member Langan

Vote to adopt Resolution #41-2010 (6-0)

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Resolution #41-2010 Passed

b. Purchase of Speed Signs – Council Member Smallwood

Motion to authorize the purchase of solar-powered speed signs by the Fenwick Island Police Department using \$8,000 from the General Funds Account to be reimbursed upon receipt of grant funds – Council Member Smallwood

Second – Council Member Carmean

DISCUSSION

None

Vote to authorize the purchase of solar-powered speed signs by the Fenwick Island Police Department using \$8,000 from the General Funds Account to be reimbursed upon receipt of grant funds (6-0)

Motion Passed

**Approval of Minutes:**

Motion to Approve the Minutes of December 11, 2009 Meeting - Council Member Carmean

Second: Council Member Smallwood

DISCUSSION:

None

Vote to approve minutes of December 11, 2009 Meeting (6-0)

Minutes Approved

**Treasurer's Report:**

Council Member Bunting was not present. Mayor Serio asked Town Manager Abbott to explain the report.

DISCUSSION

None

Motion to Accept the Treasurer's Report - Council Member Tingle

Second - Council Member Carmean

Vote to accept the Treasurer's Report (6-0)

Treasurer's Report Approved

**2009-2010 Mid-year Budget Review – Win Abbott**

Town Manager Abbott reported that the Budget Committee met recently to review the status of the Town's funds in relation to the current budget. Progress was found to be satisfactory and no changes will be made.

**Town Manager Report:**

- Town Manager Abbott reported that the Town is the grand prize winner of the Extreme Lite Website Makeover contest sponsored by CivicPlus of Manhattan, Kansas. Official announcement will be made on February 3, 2010. The prize is valued at \$6900 and includes a web site redesign and one year of service.
- Mr. Abbott reported that, thanks to the efforts of Chief Boyden, citizens may now sign on to Nixle.com to receive public safety alerts and warnings.
- The street renaming project is on track with two streets still to be changed.
- Recycling total for November was 7.01 tons

DISCUSSION

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Council Member Carmean noted that she has signed on to the Nixle program but did not receive notice of a recent assault that occurred within Town limits. Chief Boyden advised that information of this nature is not for broadcast since it appears to have been a targeted attack involving a juvenile. It was not random in nature.

## Department Reports:

- Beach Patrol –No report
- Building Official – Report is included in the council packet.
- Public Works: Report is included in the council packet. Town Manager Abbott reported that the department is working on a study to determine the work load involved in median maintenance.
- Fenwick Island Police Department: In addition to the information included in the council packet, Chief Boyden reported that his department has taken delivery of a new vehicle that is currently in the shop being outfitted. The Department underwent a successful audit by the Department of Justice regarding handling of grant funds. Chief Boyden encouraged everyone to sign up for Nixle – it is free of charge and easy to use.

## DISCUSSION

Council Member Smallwood requested that the monthly report include the number of hours spent responding to out of town calls as well as officer time spent in court. Chief Boyden advised that he is able to include the out of town calls but that determining the time spent in court is more difficult.

## Committee Reports:

- Beach Committee –Pat Schuchman reported on behalf of Becca McWilliams. The Fenwick Freeze 2010 was extremely successful. Freeze 2009 had 116 pre-registered; Freeze 2010 had 134 pre-registered. The event raised \$2500 for the Lifeguard Fund.
- Environmental Committee –Council Member Carmean reported that the next meeting is February 9, 2009 @10:30 AM. Todd Smallwood will make a presentation on the Center for the Inland Bays. Buzz Henifin reported that the chairmanship has changed to Co-chairs Vicki Carmean and John Belian.

## Planning Commission:

Report included in Council book.

## Charter & Ordinance:

- Council Member Weistling motioned to accept a First Reading of Chapter 95 Hazardous Materials (included at the end of these minutes)  
Council Member Tingle seconded.

## DISCUSSION

Council Member Weistling noted that the proposed change add “and storage” to §95-2 Applicable transportation law.

## PUBLIC PARTICIPATION

None

Vote to accept the First Reading of Chapter 95 – Hazardous Materials: All in Favor.  
First Reading passed (6-0)

- Council Member Weistling motioned to accept a First Reading of Chapter 102 - Lighting (included at the end of these minutes)  
Council Member Langan seconded.

## DISCUSSION

Council Member Weistling noted that the proposed change deletes in its entirety the current Chapter 102 – Lighting replacing it with new language in this First Reading. Residential and Commercial code is combined resulting in a shorter, more concise document. Mayor Serio asked for an explanation of “fully shielded.” Council

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Member Weistling advised that a fully shielded light will not show a bulb. Council Member Carmean advised that the Town will take action only if it receives a complaint from a neighbor.

## PUBLIC PARTICIPATION

None

Vote to accept the First Reading of Chapter 102 – Lighting: All in Favor.

First Reading passed (6-0)

- Council Member Weistling asked Building Official, Pat Schuchman, to explain on-line access to pending code. Mrs. Schuchman advised there are two ways to access Town Code online: 1) Use the Town's website "Guides and Forms" page to access General Code; 2) Log on to [www.GeneralCode.com](http://www.GeneralCode.com). The page will show a link to "legislation not yet codified." This includes Approved Second Readings which will be printed as updates to the Code Book when the annual automatic update is printed by General Code.

## Old Business:

- None

## Public Participation:

- John Belian (1 W Houston St) – announced that the Fenwick Island Fishing Club will take part in a march to Washington DC on February 24, 2010 to protest pending legislation. Contact Mr. Belian for more information.
- Buzz Henifin (48 Windward Way) – is unhappy with the hand-outs for the council meeting and wants an entire council packet made available for each and every attendee at the meeting. Mary Pat Kyle (1205 Bunting Ave) agreed with Mr. Henifin.
- Pete Frederick (1605 Bunting Ave) – noted that he had difficulty downloading the council packet. Packet can be found at the Agendas/Minutes page on the Town's website. Scroll down about half a page to locate the document.
- Mike Quinn (5 W Houston St) – noted that font be larger if the town intends to continue using a PowerPoint presentation at its meetings.

## President's Report:

- Mayor Serio noted that she has had preliminary meetings with DNREC regarding lifeguard coverage and discussions are continuing.
- Council Member Weistling asked that council draft a letter to all government representatives expressing its support of beach renewal efforts as put forward by Tony Pratt in his presentation.
- Mayor Serio advised that plans for a Public Safety Building are on track.
- ~~She~~ **Mayor Serio** will meet with DEMA and encourage them to meet with the Town in order to stay on top of the project. **any changes to Flood Regulations. This change was requested by Mayor Serio 2/26/2010 to clarify her remarks.**
- USA Today newspaper recently published an short article regarding the purchase of speed signs for the town.
- The Quarterly Budget Committee meeting was thorough and beneficial as an update of the Town's progress.
- Mayor Serio made note of upcoming meetings.

Motion to Adjourn: Council Member Weistling

Second: Council Member Langan

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All in favor Motion passed (6-0)

Mayor Serio adjourned the meeting at 4:50 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk

For Diane Tingle, Secretary

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## NOTICE

Resolution #41-2010  
Addendum to Fee Schedule

On January 22, 2010 The Fenwick Island Town Council  
Passed the Following Addendum to Resolution #38-2009  
Fee Schedule

### O - OTHER FEES

(1) Beach Bonfire Permit - \$25 & \$100

This resolution sets fee structure for Beach Bonfire Permits - Non-refundable Permit Fee (\$25) and Refundable Deposit (\$100). This fee structure is to be included in the Fee Schedule as set out by Resolution #38-2009.

Attest: \_\_\_\_\_  
Agnes D. DiPietrantonio, Town Clerk

\_\_\_\_\_  
Audrey Serio, President of Council

\_\_\_\_\_  
Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed with the noted exception by the President and Council at a meeting on January 22, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diane B. Tingle, Council Secretary

AS/adjp Addendum to Fee Schedule  
PASSED January 22, 2010

Resolution #41-2010

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*Approved First Reading – January 22, 2010*  
*Proposed Second Reading – February 26, 2010*

## **Chapter 95, HAZARDOUS MATERIALS**

### **EXISTING:**

#### **§ 95-1. Definitions.**

A. For use herein, this chapter adopts the definitions of "hazardous material," "hazardous substance" and "hazardous waste" as used by the United States Department of Transportation as more fully set forth in CFR 171.8. Items included within the definition of "hazardous material," "hazardous substance" and "hazardous waste" are listed in the Hazardous Material Table and CERCLA List as defined by the United States Department of Transportation and found in 49 CFR 172.101.

B. As used herein, "hazardous material" includes hazardous material, hazardous substance and hazardous waste.

#### **§ 95-2. Applicable transportation law.**

All federal, state and county regulations concerning the transport of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.

### **PROPOSED:**

## **Chapter 95, HAZARDOUS MATERIALS AND STORAGE**

#### **§ 95-2. Applicable transportation law.**

All federal, state and county regulations concerning the transport and storage of any hazardous material shall be applicable at all times on all streets, roadways, alleys, real estate and waterways in the Town of Fenwick Island.



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Approve First Reading – January 22, 2010  
Proposed Second Reading – February 26, 2010

## Chapter 102 – Lighting

### § 102-1. Purpose.

The purpose of this chapter regulating lighting is as follows:

- A. Permit reasonable uses of outdoor lighting for nighttime safety, utility, security and enjoyment.
- B. Minimize glare and obtrusive outdoor lighting.
- C. Conserve energy.

### § 102-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**FILTERING** -- Covering for a lamp or other light source with a glass or acrylic translucent enclosure of the light source.

**FULLY SHIELDED**—Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture which go beyond the property lines of the lot(s) on which the light source is located and the bulb cannot be seen from any other property.

**INDOOR LIGHT**—Illumination initiated, created or generated from the interior of a building or structure which is directed, reflected, filtered or otherwise from the interior to the exterior.

**INSTALLED**—The attachment, or assembly fixed in place, whether or not connected to a power source, of any outdoor light fixture.

**LIGHTING FIXTURE** -- An assembly of one or more lamps (bulbs), tubes, etc., in a device designed to hold them. The fixture may include a shielding or filtering cover.

**OUTDOOR LIGHT FIXTURES** -- Illuminating devices, lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights.

**PERSON** -- Includes firms, companies, corporations, partnerships, associations, or any organizational entity as well as individuals.

**SHIELDING** -- A device that eliminates direct light rays (from a lamp or other light source) in one or more directions.

### § 102-3. General Provisions.

- A. All outdoor illuminating devices shall be installed in conformance with the provisions of this chapter and the applicable sign regulations.
- B. Lighting, indoor or outdoor, on all properties shall be arranged so as not to reflect or cause glare onto any other property.
- C. For the purpose of this chapter, the following persons shall be presumed to be in custody and control;
  - (1) An individual owner or owners where the premises are owner occupied.
  - (2) The tenant where the premises are leased.



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- (3) A manager or person in charge of the premises.

## § 102-4. Approved materials and methods of construction or installation/operation.

The provisions of this chapter are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed by this chapter, provided that any such alternative has been approved. The Building Official may approve any such proposed alternative, provided that:

- A. It provides at least approximate equivalence to the applicable specific requirements of this chapter.
- B. It is otherwise satisfactory and complies with the intent of this chapter.
- C. Outdoor light(s) are fully shielded and not higher than 30 feet above ground level if attached to a pole or above the bottom of the roofline if attached to a building.
- D. Outdoor lighting under canopies or overhangs are fully shielded and not higher than 30 feet from ground level.
- E. The highest part of any bulb or light fixture is used in determining whether light(s) meet the height limitations of this chapter.
- F. All exterior light(s) or lighting are to be locked in a fixed position.

## § 102-5. Shielding/Filtering required.

- A. All outdoor lighting fixtures shall have shielding as required by this chapter.
- B. Metal halide fixture lamp types shall be filtered.

## § 102-6. Submission of plans; evidence of compliance with regulations.

- A. Submission contents. The applicant for any permit required by any provision of the laws of this town in connection with proposed work involving outdoor light fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this chapter. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in the laws of this town upon application for the required permit:
  - (1) Plans indicating the location of all exterior lighting on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
  - (2) A description of the illuminating devices, fixtures, lamps, supports, reflectors and other devices, and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections if needed to make the application clear).
  - (3) Photometric data, such as that furnished by manufacturers, or similar material showing the angle of cut off or light emissions.
- B. Additional submission. The plans, descriptions and data required in this section shall be sufficiently complete to enable the Building Official to determine readily whether compliance with the requirements of the Code will be secured. If such plans, descriptions and data cannot enable this determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the applicant shall additionally submit evidence of certified reports of tests showing compliance, provided that these tests shall have been performed and certified by a recognized testing laboratory.
- C. Lamp or fixture substitution. Should any outdoor light fixture be changed after the permit has been issued, a change request must be submitted to the Building Official for his or her approval, together with adequate information to assure compliance with the chapter, which must be received prior to substitution.

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## § 102-7. Prohibitions.

- A. Certain fixtures and lamps. The installation or use of any mercury vapor, low-pressure sodium, high-pressure sodium, metal halide, fluorescent, quartz or any incandescent lighting fixture or lamp greater than 160 watts which is not fully shielded as provided in the chapter.
- B. Laser source light.
- C. Searchlights.

## § 102-8. Restrictions on use.

The following apply to lamps (bulbs) with or without shielding or filtering and to lighting fixtures:

- A. Spotlights and floodlights shall be arranged so as not to directly illuminate structures on adjacent or other properties.
- B. Illumination by any device or combination of devices (including those cited in Subsection A above) that is/are located within a structure, attached to a house or other structures or located anywhere on a residential or commercial property shall not produce light intensity at any adjacent property boundary in excess of five (5) footcandles as measured by a light meter or similar device.
- C. Special attention shall be given to exposed light bulbs that are unprotected by filtering covers or shielding or not recessed into porch ceilings or roof overhangs. Such exposed light bulbs may cause glare even if all of the other provisions of this article are observed. If this occurs, corrective action, such as shielding or filtering, shall be taken.

## § 102-9. Temporary exemptions; exceptions.

- A. Request; renewal; information required. Any person may submit a written request, on a form prepared by the town, to the Building Official for a temporary exemption from the requirements of the chapter.
- B. Approval; duration. The Building Official shall have five business days from the date of submission of the request for temporary exemption to act, in writing, on the request. If approved, the exemption shall be valid for not more than 30 days from the date of issuance of the approval. The approval shall be renewable at the discretion of the Building Official upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than 30 days.
- C. Disapproval; appeal. If the request for temporary exemption is disapproved, the person making the request may appeal to the Town Council pursuant to § 102-12.
- D. Excepted from this chapter is lighting provided by the Town of Fenwick Island, county or state governments and temporary emergency lighting provided by police, firemen, electric utility companies and other such organizations. When needed, the town may allow individual residents to provide temporary emergency lighting.
- E. Exterior holiday lights are exempt.

## § 102-10 . Other exemptions.

Outdoor lighting fixtures installed prior to and operable on June 21, 1996 shall comply with the requirements of this chapter no later than July 31, 2016.

## §102-11. Written notice of violation.

In the event any person shall be found in violation of any section of this chapter, he/she or it shall be given notice in writing, by certified mail, return receipt requested, with copy by the same method to the owner of the property if different from the person given notice. The owner shall correct the violation within 30 days of the mailing of such notice.

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## § 102-12 . Appeals.

Any person aggrieved by any decision of the Building Official made in administration of this chapter has the right to appeal to the Town Council, within 15 days of receipt of notice, by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as set by resolution of the Town Council from time to time; the Town Manager shall notify the Secretary of the Town Council and shall transmit to the Secretary all the papers constituting the record upon which the decision appealed from was taken. Town Council shall set a date, time and place for the hearing of the appeal, which time and date may be at a regular Town Council meeting or a special meeting of the Town Council, so long as the applicable notice and time requirements may be met. Notice of the appeal and scheduling of the appeal before Town Council shall be sent to the appellant at least 15 days prior to the hearing date. In the event of such an appeal, enforcement is stayed until a decision has been reached by Town Council. Any decision made by Town Council is final.

## § 102-13. Violations and penalties.

Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$100 as well as costs of prosecution and any court-imposed assessments. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

## § 102-14. Applicability; severability.

- A. The provisions of this chapter are in addition to, and not in derogation of, the provisions of any other applicable laws governing lighting, including but not limited to the provisions of § 135-2H and I.
- B. The provisions of this chapter are severable. If any section, subsection, sentence, clause or phrase of this chapter or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this chapter is and shall remain in full force and effect.